

REMARKS

The above amendments and following remarks are responsive to the Office Action of January 7, 2005 and the Examiner interview of January 18, 2005. Reconsideration of the application and a notice of allowance are earnestly solicited.

The Examiner has asserted that the application presents the following two distinct groups of inventions: Group I including claims 1-11 and 13-25 which relate to a tape; and Group II including claims 26-34 which relate to a tape dispenser having the tape.

Applicant expresses appreciation to the Examiner for conducting the Examiner interview of January 18, 2005 in which Applicant provided reasons for why the Examiner should remove the pending restriction requirement. The Examiner stated that in Applicant's response to the restriction requirement, along with the election, Applicant should provide the stated reasons and the Examiner indicated that favorable consideration would be made to removing the restriction requirement.

Accordingly, Applicant hereby elects group I and provides the following traverse.

Applicant believes that the restriction requirement at this stage of prosecution is entirely inappropriate. As stated in MPEP 811, in a section titled

"Time for Making Requirement", the U.S. Patent Office requires that a restriction requirement be made "as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops." While restriction requirements are acceptable after the first Office Action, "the Examiner will consider whether there will be a serious burden (on the Patent Office) if the restriction is not required."

Claims directed to the tape and the tape dispenser (i.e., Groups I and II identified by the Examiner) were introduced in a preliminary amendment on October 31, 2001, prior to any prosecution on the merits. Since the first Office Action touching the merits of the application was provided on November 5, 2002, and until the current restriction requirement was provided, the application was managed by Examiner Brian P. Egan. During this time, Examiner Egan provided three further Office Actions, including a final Office Action on July 14, 2003, an Advisory Action on December 17, 2003 and a second non-final Office Action on April 6, 2004. Furthermore, an interview touching the merits of the case was conducted by Examiner Egan on August 31, 2004.

In none of the above mentioned official communications from the Patent Office did Examiner Egan identify the existence of separate inventions. Rather, Examiner Egan stated in an official summary of the August 31, 2004 interview

that "[g]enerally, the claimed invention allows for improved applicability to inside corners based on its folded structure."

After Examiner Egan left the U.S. Patent Office, the application was reassigned to Examiner Alicia Chevalier who provided the pending restriction requirement.

Applicant respectfully asserts that Applicant is entirely perplexed as to how Examiner Chevalier could determine, in the fourth year of prosecution of the same claims and after four Office Actions and a substantive interview based on the claims, that the present time is either "as early as possible in the prosecution" or "as soon as the need for a proper requirement develops." Applicant similarly fails to understand how Examiner Chevalier could determine, in light of the findings of Examiner Egan, that the continued prosecution of the claims places a "serious burden" on the Patent Office.

Furthermore, Applicant asserts that regardless of which Examiner manages an application, the application is handled by a one U.S. Patent Office, not 4000 Patent Offices, one for each Examiner. Each Examiner that manages an application is subject to the findings of any previous Examiner and the regulations as they apply to the continuing prosecution of the case just as if the case had originally been prosecuted by the same Examiner. Any other finding would moot any developing prosecution history for an application and moot the

regulations of the Patent Office by allowing Examiners to direct the continuing prosecution of cases both arbitrarily and unpredictably.

Accordingly, Applicant respectfully believes that the reassignment of the application at the U.S. Patent Office does not satisfy the requirement of "as early as possible in the prosecution" or "as soon as the need for a proper requirement develops", nor does the reassignment create or increase any burden on the Patent Office in prosecuting the pending claims.

Based on the above reasons, Applicant is hopeful that the restriction requirement will be forthwith removed by the Examiner, thus making it unnecessary for a petition for the withdrawal of the restriction requirement to be filed by Applicant.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Please charge any deficiency or credit any overpayment to Deposit Account No. 10-1250.

Respectfully submitted,
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